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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 480)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.

No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME I

Pages 1 to 480

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 661 Howard Street, San Francisco

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APPEARANCES:

For Plaintiff:

D. WENDELL REID,

JOHN S. PRATT,

ALDEN F. HOUCK,

GEORGE W. HIPPELI,

Special Assistants to the Attorney General,

San Francisco, California.

For Defendants:

HAROLD C. FAULKNER,

ALFONSO J. ZIRPOLI,

WILLIAM M. MALONE,

RAYMOND L. SULLIVAN,

San Francisco, California.

In the Southern Division of the United States District Court for the Northern District of California

No. 29518-G

Title 18 U.S.C.A. §§ 80 and 88

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NYE AND NISSEN, a corporation, ABRAHAM MONCHARSH, HENRY EUGENE BERMAN, RUBY JUTLAND GODDARD, EDWARD LE ROY MENGES,

Defendants.

INDICTMENT

FIRST COUNT (Title 18 U.S.C.A. Section 88):

1. In the March 1945 Term of said Division of said District Court, the Grand Jurors thereof upon their oaths present: That

2. At all times herein mentioned:

A. Nye and Nissen was a corporation organized and existing under the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California, and with plants in the said City and County of San Francisco, and in the City of Petaluma, County of Sonoma, State of California. At all times herein mentioned Nye and Nissen, a corporation, was engaged in the business of purchasing eggs, butter, and cheese from producers; in-

specting, grading, weighing, and packing eggs, butter, and cheese; and selling eggs, butter, and cheese to the United States of America—War Shipping Administration, United States War Department, and the United States Navy Department.

B. Abraham Moncharsh was president of said corporation.

C. Henry Eugene Berman was manager of the City Sales Division of said corporation. [1*]

D. Ruby Jutland Goddard was the chief shipping and receiving clerk of said corporation.

E. Edward LeRoy Menges was forman of the egg and butter rooms of said corporation.

3. James Roosevelt Nix was a truck driver for said corporation and had charge of the butter department of said corporation from about the year 1938 to on or about the 7th day of February, 1942.

4. At all times herein mentioned Nye and Nissen's sales and deliveries of eggs to the United States and to the departments, agencies, and administrations thereof were subject to the United States Standards and Weight Classes for Consumer Grades for Shell Eggs issued by the United States Department of Agriculture, and the United States Procurement Grades issued by the United States War Department; and Nye and Nissen's sales and deliveries of eggs, butter, and cheese to the United States and to the departments, agencies, and administrations thereof were subject to inspection,

* Page numbering appearing at foot of page of original certified Transcript of Record

sampling, grading, weighing, and testing by the United States Department of Agriculture and the United States War Department.

5. From about the 1st day of January, 1938, and continuing to and including the date of the return and filing of this indictment, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and at divers places within the Northern District of California, and at other places to the Grand Jurors unknown, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward Le Roy Menges, hereinafter called defendants, did unlawfully, wilfully, knowingly, and feloniously combine, conspire, confederate, and agree together, and each with the other, and with [2] James Roosevelt Nix, herein named and not herein indicted and hereinafter called co-conspirator, and with other persons to the Grand Jurors unknown, to defraud the United States:

A. By grading, weighing, packing, selling, and delivering to the United States of America, War Shipping Administration, War Department, and Navy Department, inferior products through frauds and deceptions practiced upon the inspectors, graders, and representatives of the United States Department of Agriculture, the War Shipping Administration, United States War Department, and United States Navy Department, who inspect, weigh, grade, and receive butter, cheese, and eggs

sold and delivered to said United States of America War Shipping Administration, War Department, and Navy Department.

B. By impeding, impairing, obstructing, and defeating the lawful functions of the United States Department of Agriculture, War Department, and Navy Department in the inspection, grading, weighing, and purchase of butter, cheese and eggs.

C. By circumventing and avoiding the standards, grades, weights, and specifications to which said purchases are subject by means of false and fictitious inspection, grading, and weighing; by the prevention of honest and accurate inspection, grading, and weighing by said representations; and by other tricks, schemes, devices, and concealments in the manner and by the means hereinafter set forth.

6. It was a part of the plan and conspiracy that:

A. Defendants and said co-conspirator would secretly and without authorization place stamps, falsely indicating inspection and grading by inspectors and graders of the United States Department of Agriculture and War Department, upon cases of eggs which had not been officially inspected or graded. [3]

B. Defendants and said co-conspirator would prepare sample cases of eggs which were of a higher grade than the lot to be inspected and graded, and submit the sample cases to said inspectors and graders instead of the cases designated by the inspectors and graders. Many of such

lots of eggs were delivered to the United States of America—War Shipping Administration and War Department.

C. Defendants and said co-conspirator would cause said inspectors and graders continuously to inspect and grade the same case of eggs by resubmitting for inspection and grading the same sample case, which contained a higher grade of eggs than the remainder of the lot being inspected and graded, instead of submitting for inspection and grading the cases designated by said inspectors and graders.

D. Defendants and said co-conspirator would remove grading stamps officially placed on inspected and graded cases of eggs, and resubmit the same cases of eggs for further inspection.

E. Defendants and said co-conspirator would remove eggs from cases which had been officially inspected, graded, and stamped, and replace them with eggs of an inferior grade.

F. Upon rejection of a delivery of eggs by the United States of America—War Shipping Administration and the War Department, because the eggs were not the quality represented by defendants and said co-conspirator, defendants and said co-conspirator would rearrange the lot and redeliver the same eggs, falsely representing them to be different eggs.

G. Defendants and said co-conspirator would mix cases of eggs which had not been officially in-

spected, graded, and weighed with cases of eggs which had been officially inspected, graded, and weighed, and deliver them to the United States of America—War Shipping Administration, falsely representing the whole lot as having been officially inspected, graded, and weighed. [4]

H. Defendants and said co-conspirator would mix cases of eggs of a lower quality and weight with a lot of eggs of a higher quality and weight, and deliver the mixed lot to the United States of America—War Shipping Administration and War Department, falsely representing the grade and weight of the entire lot.

I. Defendants and said co-conspirator would misrepresent the grade, weight, and price of eggs delivered to the War Department and United State of America—War Shipping Administration.

J. Defendants and said co-conspirator would cut underweight butter to be inspected, graded, and weighed by inspectors and graders of the War Department, conceal this fact from said inspectors and graders, and submit for their inspection and weighing prints of butter specially cut to conform to the required weights.

K. Defendants and said co-conspirator would recut butter previously rejected by War Department inspectors and graders and, in the absence of the inspectors and graders, so commingle it with inspected butter that it was accepted by the War Department.

L. Defendants and said co-conspirator misrepresented the weights and prices of butter sold to the United States of America—War Shipping Administration and War Department.

M. Defendants and said co-conspirator misrepresented the weights and prices of cheese sold to the United States of America—War Shipping Administration.

7. That pursuant to and in furtherance of said conspiracy, and to effect the objects thereof, at the several times and places hereinafter mentioned, within said Division and District, said defendants and co-conspirator did commit the following overt acts:

A. On or about the 1st day of February, 1942, at the San Francisco plant of defendant Nye and Nissen, a corporation, [5] defendants Ruby Jutland Goddard and Edward LeRoy Menges and co-conspirator James Roosevelt Nix cut one-pound prints of butter, which were being inspected and graded by officials of the War Department, less than one pound and submitted sample prints of butter actually weighing one pound to said officials for inspection and weighing.

B. On or about the 1st day of June, 1940, at the San Francisco plant of defendant Nye and Nissen, a corporation, defendants Ruby Jutland Goddard and Edward LeRoy Menges and co-conspirator James Roosevelt Nix placed a stamp purporting to be a grading stamp of the United States

Department of Agriculture on cases of eggs which had not been graded by United States Department of Agriculture graders or inspectors.

C. On or about the 1st day of February, 1942, at the San Francisco plant of defendant Nye and Nissen, a corporation, defendants Abraham Moncharsh, Ruby Jutland Goddard, and Edward LeRoy Menges, and co-conspirator James Roosevelt Nix, switched eggs from cases of eggs which had previously been inspected and graded by officials of the United States Department of Agriculture and War Department and inserted in their place eggs of an inferior quality.

D. On or about the 10th day of May, 1944, defendant Ruby Jutland Goddard caused forty-five cases of eggs to be sold to the United States of America—War Shipping Administration, Matson Navigation Co., General Agent, and to be delivered to the Steamship Cape Bretor at Pier 30 in the City and County of San Francisco, State of California, which eggs were of a lesser grade, weight, and price than that represented to said purchaser.

E. On or about the 10th day of May, 1944, defendant Henry Eugene Berman, at the San Francisco plant of defendant Nye and Nissen, a corporation, scraped the stamped weights off of four cases of California loaf cheese and caused said cheese to be sold [6] to the United States of America—War Shipping Administration, Moore-McCormack Steamship Co., General Agent, and to be delivered to the Steamship Cape Cumberland at

Berth 6, Outer Harbor, City of Oakland, State of California, and caused said purchaser to be charged for more pounds of cheese than were actually delivered.

Contrary to the form of the statute of the United States in such case made and provided, Section 88 of Title 18 U.S.C.A., and against the peace and dignity of the United States.

SECOND COUNT (Title 18 U.S.C.A. Section 80):

1. And the said Grand Jurors upon their oaths do further present and reallege all of the allegations of paragraphs 1 and 2 of the first count of this indictment.

2. At all times herein mentioned, Agwilines, Inc., was a corporation organized and existing under the laws of the State of Maine.

3. On the 8th day of March, 1942, the United States of America, acting by and through the War Shipping Administration, and Agwilines, Inc., entered into that contract designated GAA Contract WSA-186, which provided in substance and effect that:

A. Agwilines, Inc., was appointed the General Agent of the United States to manage and conduct the business of vessels assigned to it by the United States, for the United States, and under the directions, orders, and regulations of the United States.

B. Agwilines, Inc., for the account of the

United States, would equip, victual, supply, and maintain said vessels subject to the directions, orders, regulations, supervision, and inspection of the United States.

C. The United States would advance moneys to Agwilines, Inc., to provide for disbursements made by Agwilines, Inc., in procuring and supplying stores and supplies required for said vessels. [7]

4. On the 23rd day of November, 1942, pursuant to said contract, the War Shipping Administration assigned the vessel Cape Charles to Agwilines, Inc.

3. At all times herein mentioned, Agwilines, Inc., purchased the hereinafter mentioned supplies for the SS. Cape Charles for the account of the United States under said contract.

6. On or about the 29th day of April, 1944, in the City and County of San Francisco, State of California, and within said Division and District, Nye and Nissen, a corporation, Abraham Mondarsh, Henry Eugene Bernian, Ruby Jutland Goddard, and Edward LeRoy Menges, hereinafter called defendants, did knowingly, wilfully, unlawfully, and feloniously make and use and cause to be made and used a false bill, voucher, account, and claim, to-wit, a false invoice for the sale and delivery of the hereinafter mentioned supplies to the United States of America, War Shipping Administration, said invoice being from defendant Nye and Nissen, a corporation, dated the 29th day of April, 1944, to the United States of America, War Shipping

Administration, Agwilines, Interocean S. S. Co., General Agents, City, in the sum of $789.18, for the delivery of three cases of cheddar cheese, 240 pounds at $0.287 per pound, $68.88; and 36 cases of eggs, medium processed AA, 1080 dozen at $0.41 per dozen, $442.80; to be delivered, pursuant to Agwilines, Inc., purchase order No. CHAR-60, to the SS. Cape Charles at Pier 18; the said defendants, and each of them, then and there well knowing said invoice to contain fraudulent and fictitious statements and entries in a matter within the jurisdiction of a department and agency of the United States, the War Shipping Administration, to-wit, the purchase and receipt of supplies for vessels for the account of the United States; the defendants, and each of them, then and there well knowing said invoice to be fraudulent and fictitious in that cheddar cheese of a lesser weight and price, and eggs of a lower grade, weight, and price were delivered to said SS. Cape Charles than were represented and billed for in said invoice; and the defendants, and each of them, then and there well knowing that the purchase and receipt of said supplies for said SS. Cape Charles was a matter within the jurisdiction of the United States, War Shipping Administration. [8]

Contrary to the form of the statute of the United States in such case made and provided, Section 80, Title 18 U. S. C. A., and against the peace and dignity of the United States.

THIRD COUNT (Title 18 U.S.C.A. Section 80):

1. And the said Grand Jurors upon their oaths do further present and reallege all of the allegations of paragraphs 1 and 2 of the first count of this indictment.

2. At all times herein mentioned Deconhil Shipping Company was a corporation organized and existing under the laws of the State of Nevada.

3. On the 1st day of December 1942, the United States of America, acting by and through the War Shipping Administration, and Deconhil Shipping Company entered into that contract designated GAA Contract WSA-3733, which provided in substance and effect that:

A. Deconhil Shipping Company was appointed the general agent of the United States to manage and conduct the business of vessels assigned to it by the United States, for the United States, and under the directions, orders, and regulations of the United States.

B. Deconhil Shipping Company for the account of the United States would equip, victual, supply, and maintain said vessels subject to the directions, orders, regulations, supervision, and inspection of the United States.

C. The United States would advance moneys to Deconhil Shipping Company to provide for disbursements made by Deconhil Shipping Company in procuring and supplying stores and supplies required for said vessels.

4. On the 25th day of February 1944, pursuant to said contract, the War Shipping Administration assigned the vessel Mission San Diego to Deconhil Shipping Company.

5. At all times herein mentioned Deconhil Shipping Company purchased the hereinafter mentioned supplies for the SS. Mission San Diego for the [9] account of the United States under said contract.

6. On or about the 10th day of May 1944, in the City and County of San Francisco, State of California, and within said Division and District, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward LeRoy Menges, hereinafter called defendants, did knowingly, wilfully, unlawfully, and feloniously make and use and cause to be made and used a false bill, voucher, account, and claim, to-wit, a false invoice for the sale and delivery of the hereinafter mentioned supplies to the United States of America, War Shipping Administration, said invoice being from defendant Nye and Nissen, a corporation, dated the 10th day of May 1944, to the United States of America, War Shipping Administration, Deconhil S. S. Co., General Agents, City, in the sum of $307.07, for the delivery of 10 cases of eggs, medium processed AA, 300 dozen at $0.41 per dozen, $123.00; one case Romano Dolce cheese, 65 pounds at $0.40 per pound, $26.00; and one case of cheddar loaf cheese, 30 pounds at $0.295 per pound, $8.85; to be delivered pursuant to Deconhil Shipping Company purchase order No. 1124 S.

to the SS. Mission San Diego, Oakland, California; the said defendants, and each of them, then and there well knowing said invoice to contain fraudulent and fictitious statements and entries in a matter within the jurisdiction of a department and agency of the United States, the War Shipping Administration, to-wit, the purchase and receipt of supplies for vessels for the account of the United States; the defendants, and each of them, then and there well knowing said invoice to be fraudulent and fictitious in that eggs of a lower grade, weight, and price, Romano Dolce cheese and cheddar loaf cheese of a lesser weight and price were delivered to said SS. Mission San Diego than were represented and billed for in said invoice; and the defendants, and each of them, then and there well knowing that the purchase and receipt of said supplies for said SS. Mission San Diego was a matter within the jurisdiction of the United States, War Shipping Administration.

Contrary to the form of the statute of the United States in such case made and provided, Section 80, Title 18 U. S. C. A., and against the peace and dignity of the United States [10]

FOURTH COUNT (Title 18 U.S.C.A. Section 80):

1. And the said Grand Jurors upon their oaths do further present and reallege all of the allegations of paragraphs 1 and 2 of the first count of this indictment.

2. At all times herein mentioned Alaska Packers

Association was a corporation organized and existing under the laws of the State of California.

3. On the 7th day of October 1942, the United States of America, acting by and through the War Shipping Administration, and Alaska Packers Association entered in to that contract designated GAA Contract WSA 2974, which provided in substance and effect that:

A. Alaska Packers Association was appointed the general agent of the United States to manage and conduct the business of the vessels assigned to it by the United States, for the United States, and under the directions, orders, and regulations of the United States.

B. Alaska Packers Association for the account of the United States would equip, victual, supply, and maintain said vessels subject to the directions, orders, regulations, supervision, and inspection of the United States.

C. The United States would advance moneys to Alaska Packers Association to provide for disbursements made by Alaska Packers Association in procuring and supplying stores and supplies required for said vessels.

4. On the 4th day of October 1944, pursuant to said contract, the War Shipping Administration assigned the vessel Francis W. Parker to the Alaska Packers Association.

5. At all times herein mentioned Alaska Packers Association purchased the hereinafter mentioned

supplies for the SS. Francis W. Parker for the account of the United States under said contract.

6. On or about the 9th day of May 1944, in the City and County of San Francisco, State of California, and within said Division and District, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward LeRoy Menges, hereinafter called defendants, did knowingly, wilfully, unlawfully, and feloniously make and use and cause to be made and used a false bill, voucher, account, and claim, to-wit, a false invoice for the sale and delivery of the hereinafter mentioned supplies to the United States of America, War Shipping Administration, said invoice being from defendant Nye and Nissen, a corporation, dated the 9th day of May 1944, to the United States of America, War Shipping Administration, Alaska Packers Association, 451 Montgomery Street, City, in the sum of $996.87, for the delivery of 45 cases of eggs, medium processed AA, 1350 dozen at $0.41 per dozen, $553.50; to be delivered pursuant to Alaska Packers Association purchase order No. 2906, to the SS. Francis W. Parker at Pier 41; the said defendants, and each of them, then and there well knowing said invoice to contain fraudulent and fictitious statements and entries in a matter within the jurisdiction of a department and agency of the United States, the War Shipping Administration, to-wit, the purchase and receipt of supplies for vessels for the account of the United States; the defendants, and each of them, then and there well knowing said invoice to be fraudulent

and fictitious in that eggs of a lower grade, weight, and price were delivered to said SS. Francis W. Parker than were represented and billed for in such invoice; and the defendants, and each of them, then and there well knowing that the purchase and receipt of said supplies for said SS. Francis W. Parker was a matter within the jurisdiction of the United States, War Shipping Administration.

Contrary to the form of the statute of the United States in such case made and provided, Section 80, Title 18 U. S. C. A., and against the peace and dignity of the United States.

FIFTH COUNT (Title 18 U.S.C.A. Section 80):

1. And the said Grand Jurors upon their oaths do further present and reallege all of the allegations of paragraphs 1 and 2 of the first count of this indictment.

2. At all times herein mentioned Alaska Transportation Co. was a corporation organized and existing under the law of Alaska. [12]

3. On the 1st day of May 1942, the United States of America, acting by and through the War Shipping Administration, and Alaska Transportation Co. entered into that contract designated GAA Contract WSA-618, which provided in substance and effect that:

A. Alaska Transportation Co. was appointed the general agent of the United States to manage and conduct the business of vessels assigned to it by the United States, for the United States, and under

the directions, orders and regulations of the United States.

B. Alaska Transportation Co. for the account of the United States would equip, victual, supply, and maintain said vessels subject to the directions, orders, regulations, supervision, and inspection of the United States.

C. The United States would advance moneys to Alaska Transportation Co. to provide for disbursements made by Alaska Transportation Co. in procuring and supplying stores and supplies required for said vessels.

4. On the 21st day of March 1944, pursuant to said contract, the War Shipping Administration assigned the vessel Gilbert Hitchcock to Alaska Transportation Co.

5. At all times herein mentioned Alaska Transportation Co. purchased the hereinafter mentioned supplies for the SS. Gilbert Hitchcock for the account of the United States under said contract.

6. On or about the 1st day of May 1944, in the City and County of San Francisco, State of California, and within said Division and District, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward LeRoy Menges, hereinafter called defendants, did knowingly, wilfully, unlawfully, and feloniously make and use and cause to be made and used a false bill, voucher, account, and claim, to-wit, a false invoice for the sale and delivery of the

hereinafter mentioned supplies to the United States of America, War Shipping Administration, said invoice being from defendant Nye and Nissen, a corporation, dated the 1st day of May 1944, to [13] the United States of America, War Shipping Administration, Alaska Transportation Co., General Agents, City, in the sum of $1478.42, for the delivery of 55 cases of eggs, medium processed AA, 1650 dozen at $0.41 per dozen, $676.50; and 2 cases of cheddar trips, 160 pounds at $0.287 per pound, $45.92; to be delivered, pursuant to Alaska Transportation Co. purchase order No. H 8, to the SS. Gilbert Hitchcock, Pier 23; the said defendants, and each of them, then and there well knowing said invoice to contain fraudulent and fictitious statements and entries in a matter within the jurisdiction of a department and agency of the United States, the War Shipping Administration, to-wit, the purchase and receipt of supplies for vessels for the account of the United States; the defendants, and each of them, then and there well knowing said invoice to be fraudulent and fictitious in that cheddar trip of a lesser weight and prices, and eggs of a lower grade, weight, and price were delivered to said SS. Gilbert Hitchcock than were represented and billed for in said invoice; and the defendants, and each of them, then and there well knowing that the purchase and receipt of said supplies for said SS. Gilbert Hitchcock was a matter within the jurisdiction of the United States, War Shipping Administration.

Contrary to the form of the statute of the United

States in such case made and provided, Section 80, Title 18 U. S. C. A., and against the peace and dignity of the United States.

SIXTH COUNT (Title 18 U.S.C.A. Section 80):

1. And the said Grand Jurors upon their oaths do further present and reallege all of the allegations of paragraphs 1 and 2 of the first count of this indictment.

2. At all times herein mentioned American-Hawaiian Steamship Company was a corporation organized and existing under the laws of the State of New Jersey.

3. On the 6th day of March 1942, the United States of America, acting by and through the War Shipping Administration, and American-Hawaiian Steamship Company entered into that contract designated GAA Contract WSA-206, which provided in substance and effect that: [14].

A. American-Hawaiian Steamship Company was appointed the general agent of the United States to manage and conduct the business of vessels assigned to it by the United States, for the United States, and under the directions, orders, and regulations of the United States.

B. American-Hawaiian Steamship Company for the account of the United States would equip, victual, supply, and maintain said vessels subject to the directions, orders, regulations, supervision, and inspection of the United States.

3. The United States would advance moneys to American-Hawaiian Steamship Company to provide for disbursements made by American-Hawaiian Steamship Company in procuring and supplying stores and supplies required for said vessels.

4. On the 3rd day of January 1944, pursuant to said contract, the War Shipping Administration assigned the vessel Czechoslovakia Victory to American-Hawaiian Steamship Company.

5. At all times herein mentioned, American-Hawaiian Steamship Company purchased the hereinafter mentioned supplies for the SS. Czechoslovakia Victory for the account of the United States under said contract.

6. On or about the 3rd day of May 1944, in the City and County of San Francisco, State of California, and within said Division and District, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward LeRoy Menges, hereinafter called defendants, did knowingly, wilfully, unlawfully, and feloniously make and use and cause to be made and used a false bill, voucher, account, and claim, to-wit, a false invoice for the sale and delivery of the hereinafter mentioned supplies to the United States of America, War Shipping Administration, said invoice being from defendant Nye and Nissen, a corporation, dated the 3rd day of May 1944, to the United States of America, War Shipping Administration, American-Hawaiian S. S. Co., General Agents, San Francisco, Cal. in the sum of $251.25,

for the delivery of 25 cases of eggs, medium A, 750 dozen at $0.335 per dozen, $251.25; to be delivered pursuant to American-Hawaiian Steamship Company purchase order No. 922 to the SS. Czechoslovakia Victory; the said defendants, and each of them, then and there well knowing said invoice to contain fraudulent and fictitious statements and entries in a matter within the jurisdiction of a department and agency of the United States, the War Shipping Administration, to-wit, the purchase and receipt of supplies for vessels for the account of the United States; the defendants, and each of them; then and there well knowing said invoice to be fraudulent and fictitious in that eggs of a lower grade, weight, and price were delivered to said SS. Czechoslovakia Victory than were represented and billed for in said invoice; and the defendants, and each of them, then and there well knowing that the purchase and receipt of said supplies for said SS. Czechoslovakia Victory was a matter within the jurisdiction of the United States, War Shipping Administration.

Contrary to the form of the statute of the United States in such case made and provided, Section 80, Title 18 U. S. C. A., and against the peace and dignity of the United States.

SEVENTH COUNT (Title 18 U.S.C.A. Section 80):

1. And the said Grand Jurors upon their oaths do further present and reallege all of the allegations of paragraphs 1 and 2 of the first count of this indictment.

2. At all times herein mentioned The De La Rama Steamship Co., Inc. was a corporation organized and existing under the laws of the Philippine Islands.

3. On the 29th day of September 1942, the United States of America, acting by and through the War Shipping Administration, and The De La Rama Steamship Co., Inc. entered into that contract designated GAA Contract WSA-2953, which provided in substance and effect that:

A. The De La Rama Steamship Co., Inc., was appointed the general agent of the United States to manage and conduct the business of vessels assigned to it by the United States, for the United States, and under the directions, orders, and regulations of the United States. [16]

B. The De La Rama Steamship Co., Inc. for the account of the United States would equip, victual, supply, and maintain said vessels subject to the directions, orders, regulations, and inspection of the United Etates.

C. The United States would advance moneys to The De La Rama Steamship Co., Inc. to provide for disbursements made by The De La Steamship Co., Inc. in procuring and supplying stores and supplies required for said vessels.

4. On the 21st day of March 1944, pursuant to said contract, the War Shipping Administration assigned the vessel Henry White to The De La Rama Steamship Co., Inc.

5. At all times herein mentioned, The De La Rama Steamship Co., Inc. purchased the hereinafter mentioned supplies for the SS. Henry White for the account of the United States under said contract.

6. On or about the 1st day of May 1944, in the City and County of San Francisco, State of California, and within said Division and District, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward LeRoy Menges, hereinafter called defendants, did knowingly, wilfully, unlawfully, and feloniously make and use and cause to be made and used a false bill, voucher, account, and claim, to-wit, a false invoice for the sale and delivery of the hereinafter mentioned supplies to the United States of America, War Shipping Administration, said invoice being from defendant Nye and Nissen, a corporation, dated the 1st day of May 1944, to the United States of America, War Shipping Administration, De La Rama S. S. Co., General Agents, City, in the sum of $1263.56, for the delivery of 50 cases of eggs, medium processed AA, 1500 dozen at $0.41 per dozen, $615.00; to be delivered pursuant to The De La Rama Steamship Co., Inc. purchase order No. 3601, to the SS. Henry White at the Howard Terminal, Oakland, California; the said defendants, and each of them, then and there well knowing said invoice to contain fraudulent and fictitious statements and entries in a matter within the jurisdiction of a department and agency of the United States, the War Shipping Administration.

to-wit, the purchase and receipt of supplies for vessels for the account of [17] the United States; the defendants, and each of them, then and there well knowing said invoice to be fraudulent and fictitious in that eggs of a lower grade, weight and price were delivered to said SS. Henry White than were represented and billed for in said invoice; and the defendants, and each of them, then and there well knowing that the purchase and receipt of said supplies for said SS. Henry White was a matter within the jurisdiction of the United States, War Shipping Administration.

Contrary to the form of the statute of the United States in such case made and provided, Section 80, Title 18 U. S. C. A., and against the peace and dignity of the United States.

FRANK J. HENNESSY,
United States Attorney.
TOM C. CLARK,
Assistant Attorney General.

Presented in Open Court and Ordered Filed Jun. 20, 1946.

[Title of District Court and Cause.]

DEMURRER OF DEFENDANTS

Now come the defendants above named (hereinafter referred to as "said defendants") and, not waiving their respective right to plead not guilty to the indictment heretofor filed herein, file their

demurrer to said indictment and for grounds of demurrer specify:

I.

That this Court does not have jurisdiction of said defendants on said indictment.

II.

That this Court does not have jurisdiction of the subject matter of the purported offenses. [19]

III.

That each count of the indictment fails to allege facts sufficient to constitute an offense under the laws of the United States.

IV.

That the first count of the indictment is uncertain in this, that it does not appear nor can it be ascertained therefrom:

(a) How or in what manner said defendants conspired, or could have conspired, to defraud the United States and what the agreement, if any, to defraud the United States was.

(b) How or in what manner said acts and things alleged in subparagraph A of paragraph 5 of the first count of the indictment to have been committed and done by said defendants and said co-conspirator could defraud or tend to defraud the United States, or what the frauds and deceptions alleged in said subparagraph to have been practiced were.

(c) How or in what manner said defendants and said co-conspirator impeded, impaired, ob-

structed and defeated the lawful functions of the United States Department of Agriculture, War Department and Navy Department.

(d) What said lawful functions alleged to have been impeded, impaired, obstructed and defeated were.

(e) What the purchases referred to in subparagraph C of paragraph 5 of the first count of the indictment were; to what inspection, grading and weighing alleged in said subparagraph to have been prevented referred; and what the other tricks, schemes, devices and concealments in said subparagraph were.

(f) How or in what manner the acts alleged in subparagraph A of paragraph 6 of the first count of the indictment defrauded or tended to defraud anyone, if so, whom; by whom said cases of eggs in said subparagraph mentioned were to be officially inspected and graded. [20]

(g) How or in what manner the acts alleged to in subparagraph B of paragraph 6 of the first count of the indictment defrauded or tended to defraud anyone, and by whom the eggs therein referred to were delivered to the United States of America, War Shipping Administration and War Department.

(h) How or in what manner the acts alleged in subparagraph C of paragraph 6 of the first count of the indictment defrauded or tended to defraud anyone and for whom the eggs therein referred to were intended.

(i) For whom the eggs referred to in subparagraph D of paragraph 6 of the first count of the indictment were intended and to whom they were to be resubmitted for further inspection.

(j) By whom the eggs referred to in subparagraph E of paragraph 6 of the first count of the indictment were officially inspected, for whom said eggs were intended, if anyone, to whom said eggs were delivered, if anyone, and what claims were presented therefor, if any were presented.

(k) To whom the eggs referred to in subparagraph F of paragraph 6 of the first count of the indictment were redelivered and whether or not any claim was presented by defendants or said co-conspirator therefor.

(l) By whom the eggs referred to in subparagraph G of paragraph 6 of the first count of the indictment were to be or had been officially inspected.

(m) How or in what manner said defendants and said co-conspirator falsely represented the grade and weight of the eggs referred to in subparagraph H of paragraph 6 of the first count of the indictment and how or in what manner such representation defrauded or could have defrauded the United States or a department or agency thereof.

(n) To whom the grade, weight and price of the eggs referred to in subparagraph I of para- [21] graph 6 of the first count of the indictment were misrepresented and how.

(o) How or in what manner the acts referred to in subparagraph J of paragraph 6 of the first count of the indictment could defraud or tend to defraud anyone.

(p) How or in what manner the acts referred to in subparagraph K of paragraph 6 of the first count of the indictment could defraud the War Department if the butter referred to in said subparagraph was in fact accepted by said department.

(q) How or in what manner and to whom said defendants and said co-conspirator misrepresented the weights and prices of the butter referred to in subparagraph L of paragraph 6 of the first count of the indictment.

(r) How or in what manner and to whom said defendants and said co-conspirator misrepresented the weights and prices of the cheese referred to in subparagraph M of paragraph 6 of the first count of the indictment.

(s) Where within the jurisdiction of this Court the overt acts referred to in subparagraphs A, B and C of paragraph 7 of the first count of the indictment were committed.

V.

That the first count of the indictment is ambiguous for the reasons stated in paragraph IV hereof.

VI.

That the first count of the indictment is indefinite for the reasons stated in paragraph IV hereof.

VII.

That the second count of the indictment is uncertain in this, in that it does not appear nor can it be ascertained therefrom:

(a) What the terms of said contract with Agwilines, Inc. were, since a copy of the same [22] is not attached to the indictment nor its terms sufficiently set forth therein.

(b) How or in what manner said Agwilines, Inc. became an agent of or an agency of the United States.

(c) What the matter within the jurisdiction of an agency of the United States referred to in paragraph 6 of the second count was.

(d) How or in what manner said defendants made and used or caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the second count.

(e) To whom said false bill, voucher, account and claim referred to in paragraph 6 of the second count was made.

(f) How or in what manner the purchase and receipt of supplies for vessels for the account of the United States constitutes a matter within the jurisdiction of a department and agency of the United States.

VIII.

That the second count of the indictment is ambiguous for the reasons stated in paragraph VII hereof.

IX.

That the second count of the indictment is indefinite for the reasons stated in paragraph VII hereof.

X.

That the third count of the indictment is uncertain in this, in that it does not appear nor can it be ascertained therefrom:

(a) What the terms of said contract with Deconhil Shipping Company were, since a copy of the same is not attached to the indictment nor its terms sufficiently set forth therein.

(b) How or in what manner said Deconhil Shipping Company became an agent or agency of the United States.

(c) What the matter within the jurisdiction of an agency of the United States referred to [23] in paragraph 6 of the third count was.

(d) How or in what manner said defendants made and used or caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the third count.

(e) To whom said false bill, voucher, account and claim referred to in paragraph 6 of the third count was made.

(f) How or in what manner the purchase and receipt of supplies for vessels for the account of the United States constitutes a matter within the jurisdiction of a department and agency of the United States.

XI.

That the third count of the indictment is ambiguous for the reasons stated in paragraph X hereof.

XII.

That the third account of the indictment is indefinite for the reasons stated in paragraph X hereof.

XIII.

That the fourth count of the indictment is uncertain in this, in that it does not appear nor can it be ascertained therefrom:

(a) What the terms of said contract with Alaska Packers Association were, since a copy of the same is not attached to the indictment nor its terms sufficiently set forth therein.

(b) How or in what manner said Alaska Packers Association became an agent or agency of the United States.

(c) What the matter within the jurisdiction of an agency of the United States referred to in paragraph 6 of the fourth count was.

(d) How or in what manner said defendants made and used or caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the fourth count.

(e) To whom said false bill, voucher, ac- [24] count and claim referred to in paragraph 6 of the fourth count was made.

(f) How or in what manner the purchase and receipt of supplies for vessels for the account of the

United States constitutes a matter within the jurisdiction of a department and agency of the United States.

XIV.

That the fourth count of the indictment is ambiguous for the reasons stated in paragraph XIII hereof.

XV.

That the fourth count of the indictment is indefinite for the reasons stated in paragraph XIII hereof.

XVI.

That the fifth count of the indictment is uncertain in this, in that it does not appear nor can it be ascertained therefrom:

(a) What the terms of said contract with Alaska Transportation Co. were, since a copy of the same is not attached to the indictment nor its terms sufficiently set forth therein.

(b) How or in what manner said Alaska Transportation Co. became an agent or agency of the United States.

(c) What the matter within the jurisdiction of an agency or the United States referred to in paragraph 6 of the fifth count was.

(d) How or in what manner said defendants made and used or caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the fifth count.

(e) To whom said false bill, voucher, account and claim referred to in paragraph 6 of the fifth count was made.

(f) How or in what manner the purchase and receipt of supplies for vessels for the account of the United States constitutes a matter within the jurisdiction of a department and agency of the United States. [25]

XVII.

That the fifth count of the indictment is ambiguous for the reasons stated in paragraph XVI hereof.

XVIII.

That the fifth count of the indictment is indefinite for the reasons stated in paragraph XVI hereof.

XIX.

That the sixth count of the indictment is uncertain in this, in that it does not appear nor can it be ascertained therefrom:

(a) What the terms of said contract with American-Hawaiian Steamship Company were, since a copy of the same is not attached to the indictment nor its terms sufficiently set forth therein.

(b) How or in what manner said American-Hawaiian Steamship Company became an agent or agency of the United States.

(c) What the matter within the jurisdiction of an agency of the United States referred to in paragraph 6 of the sixth count was.

(d) How or in what manner said defendants made and used or caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the sixth count.

(e) To whom said false bill, voucher, account and

claim referred to in paragraph 6 of the sixth count was made.

(f) How or in what manner the purchase and receipt of supplies for vessels for the account of the United States constitutes a matter within the jurisdiction of a department and agency of the United States.

XX.

That the sixth count of the indictment is ambiguous for the reasons stated in paragraph XIX hereof. [26]

XXI.

That the sixth count of the indictment is indefinite for the reasons stated in paragraph XIX hereof.

XXII.

That the seventh count of the indictment is uncertain in this, in that it does not appear nor can it be ascertained therefrom:

(a) What the terms of said contract with the De La Rama Steamship Co. were, since a copy of the same is not attached to the indictment nor its terms sufficiently set forth therein.

(b) How or in what manner said The De La Rama Steamship Co. became an agent or agency of the United States.

(c) What the matter within the jurisdiction of an agency of the United States referred to in paragraph 6 of the seventh count was.

(d) How or in what manner said defendants made and used or caused to be made and used the

false bill, voucher, account and claim referred to in paragraph 6 of the seventh count.

(e) To whom said false bill, voucher, account and claim referred to in paragraph 6 of the seventh count was made.

(f) How or in what manner the purchase and receipt of supplies for vessels for the account of the United States constitutes a matter within the jurisdiction of a department and agency of the United States.

XXIII.

That the seventh count of the indictment is ambiguous for the reasons stated in paragraph XXII hereof.

XXIV.

That the seventh count of the indictment is indefinite for the reasons stated in paragraph XXII hereof. [27]

XXV.

That each of the counts of the indictment is uncertain, ambiguous and indefinite in that it does not appear from said counts how or in what manner said defendants, if any of them or if at all, participated in the commission of any of the acts alleged to have been committed in said counts.

Wherefore, said defendants and each of them pray that this demurrer be sustained as to each and every count of said indictment and that each and every count thereof be dismissed as to said defendants and each of them.

Dated: June 29, 1945.

MALONE & SULLIVAN,
HAROLD C. FAULKNER,
Attorneys for Defendants.

[Endorsed]: Filed July 6, 1945. [28]

[Title of District Court and Cause.]

NOTICE OF MOTION TO QUASH INDICTMENT

To Plaintiff Above Named and to Honorable Frank J. Hennessy, United States Attorney and to Honorable Tom C. Clark, Assistant Attorney General, Attorneys for Plaintiff:

You and Each of You Will Please Take Notice that on Monday the 9th day of July, 1945, at the hour of 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court, to-wit, in the courtroom of the Honorable Michael J. Roche, Judge of said Court in the Post Office Building in the City and County of San Francisco, State of California, Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward Le Roy Menges, Defendants above named will, without waiving their respective rights to plead not guilty to the indictments heretofore filed herein, severally move the above-entitled Court for an [29] order quashing the indictment on file herein upon the grounds that:

1). These defendants have been separately indicted herein for the identical alleged conspiracy for which one other person (not herein indicted but named herein as co-conspirator) has been separately and simultaneously indicted in that certain action entitled "In the District Court of the United States for the Northern District of California, Southern Division, United States of America, Plaintiff vs. James Roosevelt Nix, Defendant, No. 29517-R".

2) It is improper to prosecute by separate indictments namely by the indictment on file herein and the separate indictment in Case No. 29517-R when it appears that all defendants in both indictments were known to the Grand Jury at the time of the return of the earlier of said two indictments, to-wit, Case No. 29517-R; and all defendants are alleged to have committed the same conspiracy.

3) It is prejudicial to these defendants and contrary to the interests of justice, to indict these defendants separately for the same alleged conspiracy for which one other person (not herein indicted but named herein as co-conspirator) has been separately and simultaneously indicted in Case No. 29517-R.

4) Separate and several proceedings for the acts and matters alleged in the indictments on file in Case No. 29517-R and Case No. 29518-G are improper, prejudicial to the defendants named herein and contrary to the interests of justice.

Said motion will be made upon this notice of motion and the files in said case, and on the indictment on file in Case No. 29517-R.

Dated: San Francisco, California, July 3, 1945.

/s/ MALONE & SULLIVAN,
/s/ HAROLD C. FAULKNER,
/s/ A. J. ZIRPOLI,
Attorneys for Defendants.

[Endorsed]: Filed July 6, 1945. [30]

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 13th day of July, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

Order Overruling Demurrer to Indictment and Denying Motion to Quash Indictment. Defendants' Pleas of Not Guilty Entered.

This case came on regularly this day for hearing of motion to quash Indictment, demurrer to Indictment, and to plead. The defendants were present in proper person and with their respective attorneys: Harold Faulkner, William Malone, A. J. Zirpoli and Raymond Sullivan, Esqrs., Valentine C. Hammack, Esq., Special Assistant Attorney General, and Geo.

Hippeli, Esq., Special Attorney for the United States, were present.

After hearing the attorneys, and due consideration having been thereon had, It Is Ordered that the demurrer to Indictment be overruled and that the motion to quash Indictment be denied, to which ruling an exception was noted.

The defendants were called to plead and thereupon each individual defendant pleaded "Not Guilty" to the Indict- [31] ment, and Mr. Faulkner entered a plea of "Not Guilty" on behalf of the defendant Nye & Nissen, a corporation, which said pleas were ordered entered.

After hearing the attorneys, it is ordered that this case be continued to September 23, 1945 for trial (Jury.) [31-A]

[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS

Now Come the defendants: Nye and Nissen, a corporation, Abraham Moncharsh, Henry Eugene Berman, Ruby Jutland Goddard, and Edward Le Roy Menges, in the above-entitled action, and each separately moves the above-entitled Court for an order requiring and directing the United States Attorney for the Northern District of California, and or the Special Assistants to the Attorney General, whose names appear on the indictment in the above-entitled action, or with whom is charged the responsibility of prosecuting the above-entitled ac-

tion, to furnish to each of said defendants a [32] Bill of Particulars as to each and all of the following matters which do not and each of which does not clearly appear from the indictment herein, in order that each of said defendants may know and be particularly informed concerning the following matters and in order that they and each of them may prepare for trial, to-wit:

1. What the frauds and deceptions, referred to in paragraph A of subdivision 5 of the First Count alleged to have been practiced upon the inspectors, graders, and representatives therein named, were.

2. When, or at what times, said frauds and deceptions referred to in paragraph A of subdivision 5 of the First Count were practiced upon the persons therein named.

3. Which defendants practiced said frauds and deceptions referred to in paragraph A of subdivision 5 of the First Count upon the persons therein named.

4. Who were the inspectors, graders, and representatives referred to in paragraph A of subdivision 5 of the First Count upon whom said frauds and deceptions therein mentioned were practiced.

5. How said defendants impeded, impaired, obstructed, and defeated the lawful functions of the United States Department of Agriculture, War Department, and Navy Department in the inspection, grading, weighing and purchase of butter, cheese and eggs.

6. What lawful functions of the Departments referred to in paragraph B of subdivision 5 of the First Count were impeded, impaired, obstructed, and defeated.

7. When and at what times said lawful functions of the Departments referred to in paragraph B of subdivision 5 of the First Count were impeded, impaired, obstructed, and defeated.

8. Which defendants impeded, impaired, obstructed, and defeated the lawful functions of the Departments referred to in paragraph B of [33] subdivision 5 of the First Count.

9. How the false and fictitious inspection, grading, and weighing referred to in paragraph C of subdivision 5 of the First Count was perpetrated.

10. When and at what times the false and fictitious inspection, grading, and weighing referred to in paragraph C of subdivision 5 of the First Count was made.

11. By whom the false and fictitious inspection, grading, and weighing referred to in paragraph C of subdivision 5 of the First Count was made.

12. Which defendants circumvented and avoided the standards, grades, weights and specifications of the purchases referred to in paragraph C of subdivision 5 of the First Count.

13. What the purchases referred to in paragraph C of subdivision 5 of the First Count were, when they were made, by whom they were made, and from whom they were made.

14. Who the representatives referred to in paragraph C of subdivision 5 of the First Count were.

16. How the honest and accurate inspection, grading, and weighing of the representatives referred to in paragraph C of subdivision 5 of the First Count was prevented.

17. Which of the defendants prevented the honest and accurate inspection, grading, and weighing of the representatives referred to in paragraph C of subdivision 5 of the First Count.

18. When and at what times the representatives referred to in paragraph C of subdivision 5 of the First Count were prevented from making honest and accurate inspections, gradings, or weights.

19. When and at what times said defendants and said co-conspirators secretly and without authorization placed stamps upon the cases of eggs referred to in paragraph A of subdivision 6 of the First Count. [34]

20. Which of said defendants secretly and without authorization placed stamps upon the cases of eggs referred to in paragraph A of subdivision 6 of the First Count.

21. When and at what times said defendants and said co-conspirator prepared the sample cases of eggs referred to in paragraph B of subdivision 6 of said First Count.

22. When and at what times said defendants and said co-conspirator submitted to inspectors and

graders the sample cases of eggs referred to in paragraph B of subdivision 6 of the First Count.

23. To which inspectors the sample cases of eggs referred to in paragraph B of subdivision C of the First Count were submitted.

24. When and at what times the lots of eggs referred to in paragraph B of subdivision 6 of the First Count were delivered to the United States of America—War Shipping Administration and War Department (specifically setting forth when said lots and how many of said lots were delivered to each of said Departments).

25. Which of said defendants prepared the sample cases of eggs referred to in paragraph B of subdivision 6 of the First Count.

26. Which of said defendants submitted to inspectors and graders the sample cases of eggs referred to in paragraph B of subdivision 6 of the First Count.

27. Which of said defendants delivered the lots of eggs referred to in paragraph B of subdivision 6 of the First Count to the War Shipping Administration.

28. Which of said defendants delivered the lots of eggs referred to in paragraph B of subdivision 6 of the First Count to the War Department.

29. When and at what times the same case [35] of eggs referred to in paragraph C of subdivision 6 of the First Count was resubmitted for inspection and grading.

3. Which of said defendants resubmitted for inspection and grading the same case of eggs referred to in paragraph C of subdivision 6 of the First Count.

31. To whom said same case of eggs referred to in paragraph C of subdivision 6 of the First Count was resubmitted for inspection and grading.

32. What the grade of the eggs of remainder of the lot referred to in paragraph C of subdivision 6 of the First Count as being inspected and graded was.

33. What the grade of the eggs of the same case of eggs resubmitted for inspection and grading as referred to in paragraph C of subdivision 6 of the First Count was.

34. When and at what times said defendants and said co-conspirator removed the grading stamps referred to in paragraph D of subdivision 6 of the First Count.

35. Which of said defendants removed the grading stamps referred to in paragraph D of subdivision 6 of the First Count.

36. When and at what times said defendants and said co-conspirator resubmitted for further inspection the cases of eggs referred to in paragraph D of subdivision 6 of the First Count.

37. Which of said defendants resubmitted for further inspection the cases of eggs referred to in paragraph D of subdivision 6 of the First Count.

38. When and at what times said defendants and said co-conspirator removed the eggs from the cases in the manner referred to in paragraph E of subdivision 6 of the First Count.

39. Which of said defendants removed the eggs from the cases in the manner referred to in paragraph E of subdivision 6 of the First Count.

40. What the grade of the eggs removed [36] from cases in the manner mentioned in paragraph E of subdivision 6 of the First Count was.

41. What the grade of the eggs referred to in paragraph E of subdivision 6 of the First Count as "an inferior grade" was.

42. When and at what times the rejection of a delivery of eggs by the War Shipping Administration referred to in paragraph F of subdivision 6 of the First Count took place.

43. When and at what times the rejection of a delivery of eggs by the War Department referred to in paragraph F of the subdivision 6 of the First Count took place.

44. When and at what times said defendants and said co-conspirator rearranged and redelivered the same lot of eggs referred to in paragraph F of subdivision 6 of the First Count.

45. Which of said defendants rearranged and redelivered the same lot of eggs referred to in paragraph F of subdivision 6 of the First Count.

46. To whom the said same lot of eggs, alleged

in paragraph F of subdivision 6 of the First Count to have been rearranged and redelivered, were redelivered.

47. Which of said defendants represented the quality of the eggs referred to in paragraph F of subdivision 6 of the First Count.

48. When and at what times said defendants and said co-conspirator mixed the cases of eggs referred to in paragraph G of subdivision 6 of the First Count.

49. Which of said defendants mixed the cases of eggs referred to in paragraph G of subdivision 6 of the First Count.

50. When and at what times said defendants and said co-conspirator delivered to the War Shipping Administration the cases of eggs referred to in paragraph G of subdivision 6 of the First Count.

51. Which of said defendants delivered to the War Shipping Administration the cases of eggs referred to in paragraph G of subdivision 6 of the First Count.

52. Which of said defendants falsely represented the eggs referred to in paragraph G of subdivision 6 of the First Count as having been officially inspected, graded, and weighed.

53. When and at what times said defendants and said co-conspirator falsely represented the eggs referred to in paragraph G of subdivision 6 of the First Count as having been officially inspected, graded, and weighed.

54. When and at what times said defendants and said co-conspirator mixed the cases of eggs referred to in paragraph H of subdivision 6 of the First Count.

55. Which of said defendants mixed the cases of eggs referred to in paragraph H of subdivision 6 of the First Count.

56. What the quality and weight of the lots and cases of eggs referred to in paragraph H of subdivision 6 of the First Count was.

56. When and at what times the mixed lot of eggs referred to in paragraph H of subdivision 6 of the First Count were delivered to the War Shipping Administration.

58. Which of said defendants delivered the mixed lot of eggs referred to in paragraph H of subdivision 6 of the First Count to the War Shipping Administration.

59. When and at what times said defendants and said co-conspirator delivered the mixed lot of eggs referred to in paragraph H of subdivision 6 of the First Count to the War Department.

60. Which of said defendants delivered the mixed lot of eggs referred to in paragraph H of subdivision 6 of the First Count to the War Department.

61. How said defendants, which of them, [38] and when said defendants falsely represented the grade and weight of the entire lot of eggs referred

to in paragraph H of subdivision 6 of the First Count.

62. When and at what times said defendants and said co-conspirator misrepresented the grade, weight, and price of the eggs referred to in paragraph I of subdivision 6 of the First Count.

63. Which of said defendants misrepresented the grade, weight, and price of the eggs referred to in paragraph I of subdivision 6 of the First Count.

64. How said defendants and said co-conspirator misrepresented the grade, weight, and price of the eggs referred to in paragraph I of subdivision 6 of the First Count.

65. When and at what times said defendants and said co-conspirator cut the underweight butter referred to in paragraph J of subdivision 6 of the First Count.

66. Which of said defendants cut the underweight butter referred to in paragraph J of subdivision 6 of the First Count.

67. When and at what times the fact referred to in paragraph J of subdivision 6 of the First Count was concealed from inspectors and graders.

68. Which of said defendants concealed from inspector and grader the fact referred to in paragraph J of subdivision 6 of the First Count.

69. How said defendants and said co-conspirator concealed from inspectors and graders the fact re-

ferred to in paragraph J of subdivision 6 of the First Count.

70. Who the inspectors and graders, referred to in paragraph J of subdivision 6 of the First Count were.

71. When and at what times said defendants and said co-conspirator submitted for inspection [39] and weighing the prints of butter referred to in paragraph J of subdivision 6 of the First Count.

72. Which of said defendants submitted for inspection and weighing the prints of butter referred to in paragraph J of subdivision 6 of the First Count.

73. To whom the prints of butter referred to in paragraph J of subdivision 6 of the First Count were submitted for inspection and weighing.

74. When and at what times said defendants and said co-conspirator recut the butter, referred to in paragraph K of subdivision 6 of the First Count.

75. Which of said defendants recut the butter referred to in paragraph K of subdivision 6 of the First Count.

76. When and at what times said defendants commingled the butter referred to in paragraph K of subdivision 6 of the First Count.

77. Which of said defendants commingled the butter referred to in paragraph K of subdivision 6 of the First Count.

78. When and at what times said commingled

butter, referred to in paragraph K of subdivision 6 of the First Count, was accepted by the War Department.

79. When and at what times said defendants and said co-conspirator misrepresented the weights and prices of butter sold to the War Shipping Administration, and referred to in paragraph L of subdivision 6 of the First Count.

80. How said defendants and said co-conspirator misrepresented the weights and prices of butter sold to the War Shipping Administration and referred to in paragraph L of subdivision 6 of the First Count.

81. Which of said defendants misrepresented the weights and prices of the butter referred to in paragraph L of subdivision 6 of the First Count as having been sold to the War Shipping Ad- [40] ministration.

82. When and at what times said defendants and said co-conspirator misrepresented the weights and prices of the cheese referred to in paragraph M of subdivision 6 of the First Count as having been sold to the War Shipping Administration.

83. How said defendants and said co-conspirator misrepresented the weights and prices of the cheese referred to in paragraph M of subdivision 6 of the First Count as having been sold to the War Shipping Administration.

84. Which of said defendants misrepresented the weights and prices of the cheese referred to in

paragraph M of subdivision 6 of the First Count as having been sold to the War Shipping Administration.

85. A copy of the contract designated in paragraph 3 of the Second Count as GAA Contract WSA-186.

86. What the lesser weight and price of the cheddar cheese referred to in paragraph 6 of the Second Count as having been delivered to the SS. Cape Charles was.

87. What the grade, weight and price of the eggs referred to in paragraph 6 of the Second Count as having been delivered to the SS. Cape Charles was.

88. Which of said defendants made and used and caused to be made and used the false bill, voucher, account, and claim referred to paragraph 6 of the Second Count.

89. A copy of the contract designated in paragraph 3 of the Third Count as GAA Contract WSA-3733.

90. What the grade, weight, and price of the eggs referred to in paragraph 6 of the Third Count as having been delivered to the SS. Mission San Diego was.

91. What the lesser weight and price of the Romano Dolce cheese referred to in paragraph 6 of the Third Count as having been delivered to the SS. Mission San Diego was.

92. What the lesser weight and price of the [41]

cheddar cheese referred to in paragraph 6 of the Third Count as having been delivered to the SS. Mission San Diego was.

93. Which of said defendants made and used and caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the Third Count.

94. A copy of the contract designated in paragraph 3 of the Fourth Count as GAA Contract WSA-2974.

95. What the grade, weight, and price of the eggs, referred to in paragraph 6 of the Fourth Count as having been delivered to the SS. Francis W. Parker was.

96. Which of said defendants made and used and caused to be made and used the false bill, voucher, account, and claim referred to in paragraph 6 of the Fourth Count.

97. A copy of the contract designated in paragraph 3 of the Fifth Count as GAA Contract WSA-618.

98. What the lesser weight and price of the cheddar trips, referred to in paragraph 6 of the Fifth Count as having been delivered to the SS. Gilbert Hitchcock, was.

99. What the grade, weight, and price of the eggs, referred to in paragraph 6 of the Fifth Count as having been delivered to the SS. Gilbert Hitchcock was.

100. Which of said defendants made and used and caused to be made and used the false bill, voucher, account and claim referred to in paragraph 6 of the Fifth Count.

101. A copy of the contract designated in paragraph 3 of the Sixth Count as GAA Contract WSA-206.

102. What the grade, weight, and price of the eggs, referred to in paragraph 6 of the Sixth Count as having been delivered to the SS. Czechoslovakia Victory, was.

103. Which of the defendants made and used and caused to be made and used the false bill, voucher, account, and claim referred to in paragraph 6 of the Sixth Count. [42]

104. A copy of the contract designated in paragraph 3 of the Seventh Count as GAA Contract WSA-2953.

105. What the grade, weight, and price of the eggs, referred to in paragraph 6 of the Seventh Count as having been delivered to the SS. Henry White, was.

106. Which of the defendants made and used and caused to be made and used the false bill, voucher, account, and claim referred to in paragraph 6 of the Seventh Count.

This motion and demand is made upon the indictment filed herein, upon the matters set forth in this

demand, and upon the affidavit of the above named defendants filed herein and attached hereto.

/s/ MALONE & SULLIVAN,
/s/ HAROLD C. FAULKNER,
Attorneys for the above-named defendants.

[Endorsed]: Filed Oct. 17, 1945. [43]

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Abraham Moncharsh, individually and as president of Nye and Nissen, a corporation, Henry Eugene Berman, Ruby Jutland Goddard and Edward LeRoy Menges, being first duly sworn, each for himself and not one for the other, says:

That each affiant and Nye and Nissen, the above named corporation, are defendants in the above entitled action; that each affiant has read the indictment on file herein in the above entitled action; that the said indictment contains and is composed almost in its entirety of allegations of acts alleged to have been committed jointly by all of the defendants named in said indictment, [44] while it is manifest from said indictment that all of said defendants could not have jointly done or performed all of the acts therein thus generally alleged against them;

That said indictment is so worded that it gives no indication to affiants, or any of them, of the facts relied upon to show complicity of each affiant to the various acts or the offenses attempted to be set forth in said indictment;

That your affiants have been informed by their attorneys, Harold C. Faulkner, Esq., William M. Malone, Esq., and Raymond B. Sullivan, Esq., and upon such information and belief allege the fact to be that unless affiants are furnished with a Bill of Particulars which more particularly and specifically informs your affiants and each of them concerning the matters specifically set forth in their demand for Bill of Particulars they will be unable to prepare their defense, and in the event affiants are tried on said indictment they and each of them will be unable to claim prior jeopardy should they or any of them be charged in the future with any of the offenses attempted to be set forth in said indictment.

/s/ ABRAHAM MONCHARSH,
/s/ HENRY EUGENE BERMAN,
/s/ RUBY JUTLAND GODDARD,
/s/ EDWARD LEROY MENGES.

Subscribed and sworn to before me this 29th day of September, 1945.

[Seal] /s/ JOHN F. BURNS,
Notary Public in and for the City and County of San Francisco, State of California.
My Commission expires April 12, 1949.

[Endorsed]: Filed Oct. 17, 1945. [45]